IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 586 of 2006
Date of Decision : 10.07.2007

Avinash Gupta

..... Appellant

Versus

C.I.T. Aaykar Bhawan, Rishi Nagar, Ludhiana

.....Respondent

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

Present: Mr. S.K. Mukhi, Advocate
for the appellant.

JUDGEMENT

M.M. KUMAR, J.

This appeal filed under Section 260-A of the Income-Tax Act 1961 (for brevity 'the Act') is directed against orders dated 7-04-2006 (A1) passed in IT (SS) A No. 19/Chandi/2001 for the block period of 1.4.1987 to 4.2.1998. The assessee has claimed a number of substantial question of law in Para No.7 but at the time of arguments his counsel has pressed only following two questions:-

> *"B. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts and in law confirming the action of the authorities below by erroneously ignoring the fact that under similar facts and circumstances it has deleted the additions on account of FDRs/Bank Accounts of various customers but for the FDRs/Bank Accounts belonging to few relatives merely on the basis of relation and thus is an addition based on surmises and conjectures not warranted under any*

authorities of law and not even under the principles of natural justice."

"G. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts and in law confirming the action of the authorities below by erroneously ignoring the facts, statements, replies and evidences on record which action of the ITAT is perverse and illegal thus needs to be set aside by the interference of this Hon'ble Court for which the appellant prays."

A survey operation at the office premises of the appellant Shri Avinash Gupta who was working as Senior Manager, Oriental bank of Commerce, Jamalpur Awana, Ludhiana i.e. (for brevity 'the Assessee') was undertaken on 4-2-1998. It was converted into search operation under Section 132(1) and continued on 5-2-1998. The department found certain incriminating documents and those were seized. A notice under Section 158 BC of the Act was issued to the assessee for filing of return concerning un-disclosed income. The assessee furnished return of his income. The assessment of undisclosed income was completed by the Assessing Officer for the block period at Rs.86,87,513/- vide order dated 23-2-2000 and tax at the rate of 60% was determined as per Section 113 of the Act which was calculated at Rs. 52,07,107/-.

On appeal to the Commissioner of Income Tax (Appeal) the assessment order was partially sustained to the extent of Rs. 22,23,036/- only and allowed partial relief to the assessee.

The assessee as well as the revenue felt aggrieved by the order passed by the CIT (Appeal) and both of them filed appeal before the Tribunal. The Tribunal examined the question, whether Section 69 or 69 B

would be applicable to the facts of the present case. The Tribunal divided the accounts concerning the assessee in two groups. The first group was of those accounts which were in the names of the relatives of the assessee (A/C No. 3603,4298,3681,3850,4606 and 424), the other category of accounts was treated to be benami of the assessee (e.g. A/C No. 4542). The Tribunal approved the reasoning adopted by the CIT (A) in Para Nos. 4 and 5 of its order where the accounts in the names of the relatives of the assessee were dealt with. It is worthwhile to notice Para Nos. 4 and 5 of the order of the Commissioner of Income-Tax (Appeals) which reads as under:-

> *" 4. In the next part of his order the Assessing Officer has pointed out unexplained investments in saving bank accounts in the names of relatives of the appellant. It is stated that certain bank accounts were opened for encashing FDRs and in such accounts the basic procedure of the bank has been violated by Shri Avinash Gupta. In these accounts though account opening forms are available but the same does not have proper introduction. Such accounts are as under:-*
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> |---|---|---|
> | *(i)* | *3603* | *Satish Singla & Rashmi Singla* |
> | *(ii)* | *4298* | *Smt. Rashmi* |
> | *(iii)* | *3681* | *Harparkash* |
> | *(iv)* | *3850* | *Swaran Lata & Veena Devi* |
> | *(v)* | *4606* | *Satish, Vinod, Anju, Purushotami Devi* |
>
> *Brief explanation in respect of these accounts as given by the Assessing Officer in the assessment order is also given here.*
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> *Account No. 3603:- This account is in the name of Satish Singla and Rashmi Singla. Shri Satish Singla has stated that the account was that though he signed certain documents on the insistence of Shri Avinash Gupta but he had not operated this account. Similarly, the*

appellant admitted that he was operating this account without their knowledge. The Assessing Officer also stated that in this account a no. of loans have been raised. Details of such loans has been given at page 11 of the assessment order. Certain other loans have also been raised by keeping FDRs as security. Such detail is also given on page 11 & 12.

Account No. 4298:- This account is in the name of Rashmi w/o Satish Singla. Only two loans have been issued in this account against security of FDR. There was no account opening form for this account but the operation of this account has been allowed by the appellant.

Account No. 4606:- This account is in the name of Shri Satish Singla, Vinod Singla, Anju Bala and prurshotami but there was not account opening form. Shriu Satish Singla and Vinay Singla has denied the ownership of this account.

Further in para 22, page-12 of his order, the Assessing Officer has certain unexplained investments were routed through current account No. 424 maintained in the name of Satish Singla and certain loans were also raised through this account. The appellant admitted that this account was being operated without the knowledge of Shri Satish Singla. Further a no. of FDRs (as listed at Page 13 of the assessment order) were encashed from this account.

To further strengthening his arguments, the Assessing Officer has stated that a slip giving detail of 11 FDRs encashed through this account No.424 was also traced from the handbag of the appellant found in his office on the date of search. This was written in his own handwriting.

In respect of account No. 3681 which was in the name of Shri Harparkash, brother-in-law of the appellant. The

appellant agreed that this account was also stated to be operated without the knowledge of the said person. Details of loans raised against this account as well as securities have been given on page 14 & 15 in the assessment order.

Regarding account No. 3850, it is stated that this was in the name of Swarn Lata, mother-in-law of the appellant and Smt. Veena Gupta, sister-in-law of the appellant. Here also the Assessing Officer has stated that perusal of this account shows that certain loans have been raised through this account and such entries have also been produced at page 15 of his order.

Thereafter the Assessing Officer has given details of a no. of bank accounts wherein the following defects have been pointed out by the Assessing Officer. Details of such accounts appear at Page 17 to 23 in the assessment order.

(i) The complete addresses of the persons who have opened these accounts are not given.

(ii) The account opening forms are incomplete and there was no photograph.

(iii) The appellant himself was the introducer in these accounts.

(iv) They were used to encash the FDRs either on maturity or prematurity.

(v) The accounts were being operated by the appellant.

(vi) Relatives in whose name the accounts were being operated have denied the operation of these accounts.

The Assessing Officer confronted the appellant with the above facts and asked to identify these persons. In turn, the appellant replied as under:-

> *"I had introduced the accounts of the various persons, who had approached for*

the opening of their respective accounts and such introduction was made by me as a Manager of the bank. It does happen that somebody approached the bank for the opening of bank accounts and in other to increase the deposits of the bank and attract more and more customers, such accounts are introduced. All such records and other details are with the bank and I have no concern with them. With regard to the fact of identification of the persons is concerned, it may be stated that during my tenure as a Manager more than one thousand bank accounts had been opened and more than that number, FDRs had been issued and what I had stated that if a person comes before me alongwith necessary documents, loan only then identify that person concerned. Merely from the name, it is not possible for me to identify any person. The bank Manager has to deal with so many people during the day and say out and meet various people even otherwise in this age of privatisation. The above contentions are being raised only with respect to my capacity as Manager of the nationalised bank.

The Assessing Officer after considering the reply of the appellant has stated that where the bank accounts were in the names of relatives, the same were being operated by the appellant. Where the bank accounts belong to some one else it cannot be without the intimate knowledge of Shri Avinash Gupta as it would not be possible to keep track of complex transactions routed through these accounts.

The saving bank accounts in the names of relatives and fictitious persons was only conduits for encashing benami FDRs. As per the guidelines of the RBI, each FDR amounting to more than Rs.20,000/- on encashment has to be routed through the bank account of the person in whose name the FDR exists. This is to prevent fraudulent encashment by any person. According to the Assessing Officer since the maturity amounts in all these benami FDRs exceeded Rs.20,000/-, these had to be moved through saving bank accounts. The Assessing Officer by pointing out other irregularities in the opening of bank accounts concluded that the money rotated in such a manner belongs to the appellant.

5. The Assessing Officer lastly held that all the bank accounts opened in benami names whether in the names of the relatives or other benami names have been put together to prepare a peak chart having details of all the inflow and outflow from the bank accounts. According to this the Assessing Officer has prepared a chart which has been annexed to his order and where the peak investment in the bank accounts has been worked out to Rs. 22,23,036/- on 12.3.96 relevant to financial year 1996-97."

After quoting the aforementioned paras, the Tribunal concluded that the findings recorded by the CIT (A) were not rebutted by any evidence either before the Revenue Authorities or before the Tribunal and held that the Assessing Officer has rightly treated the Bank accounts, FDRs, CD accounts in the names of his relatives as the income of the assessee. It has been observed that some of the relatives did not even have the knowledge of the deposits having been made in the assessee in the bank accounts, or the accounts were opened in their names. It has further found that those accounts were operated upon by the assessee himself who was working as

Senior Manager, Oriental Bank of Commerce, Jamalpur Awana, Ludhiana. A sum of Rs. 1,22,900/- which was found as cash in possession of the assessee on the date of survey/search could not be explained. Even the source of money deposited in eleven bank accounts had also remained unexplained.

Mr. S.K. Mukhi, learned counsel for the assessee has raised only one issue that the deposits found in the bank accounts belonging to the relatives of the assessee could not be treated as his income in the hand of the assessee as the same could be considered an amount of loan obtained by him. According to the learned counsel, the aforementioned deposit could only be confiscated by the department without making any addition in the hands of the assessee because these accounts at best are illegal and unknown accounts, where the defaulting persons might not be coming forward to avoid any complicity from the Tax Authority. It has been submitted that the deposits made in the bank account cannot in any case be considered as income of the assessee in his hands. Learned counsel has then contended that the assessee was merely an over-zealous Manager who had attempted to encourage the opening of a large number of accounts and if those persons who have made the deposits are not coming forward then the same cannot constitute a basis for treating the amount deposited in their accounts as undisclosed income of the assessee in his hands.

Having heard learned counsel and perusing the record with his able assistance, we are of the view that this appeal lacks merit and is thus liable to be dismissed. The CIT(A) as well as the Tribunal have disclosed various reasons in their orders to treat the deposits in the various bank accounts as his undisclosed income assessable in the hands of the assessee.

The findings recorded by the CIT (A) and the Tribunal are that some of the relatives did not even have any knowledge of the deposits having been made by the assessee in their bank accounts and some other relatives were not even aware of accounts having been opened in their names. Significantly, the accounts have been operated by the assessee himself and no evidence was produced by him either before the Assessing Officer or the Tribunal to rebut those findings. The amount of cash of Rs.1,22,900/- found in his possession on the date of survey/search has not been explained nor the source of deposits which was found in his possession on the date of search have been disclosed by him. Therefore, it cannot be accepted that the CIT(A) or the Tribunal were not justified in connecting the appellant with the deposits found in the bank account because a true depositor would not ordinarily permit anyone else to operate his account. Moreover, the matter lies in the domain of findings of fact which are based on sufficient evidence. It cannot be said that the findings are laconic or do not have the support of evidence. It is well settled that in exercise of jurisdiction under Section 260(A) of the Act, this court cannot reverse the findings by reappreciating evidence to reach a conclusion different than the one recorded by the CIT(A) and the Tribunal merely because another view could be possible.

In view of the above, there is thus, no merit in the appeal and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

July 10, 2007
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(AJAY KUMAR MITTAL)
JUDGE